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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION (3)

10 STEVEN M. NELSON,)
11 Plaintiff,) No. 3:19-cv-01761-HZ
12 v.)
13 UNITED STATES OF AMERICA,) **PLAINTIFF'S SURREPLY**
14 by and through the NATIONAL) **MEMORANDUM TO OBJECTION**
15 OCEANIC and ATMOSPHERIC) **TO PLAINTIFF'S DECLARATION**
ADMINISTRATION) **IN OPPOSITION TO**
16 Defendant.) **DEFENDANT'S MOTION FOR**
SUMMARY JUDGMENT

17 Defendant claims that the plaintiff's statement in his declaration of April 1,
18 2021 that the gangway failed because the upper section of the gangway detached
19 from the hinge plate, and he saw multiple cracks in one of the welds on the hinge
20 plate that did not fail is not admissible evidence. The plaintiff also stated the same
21 weld on the other side of the hinge plate had no cracks.

22 The defendant's objection has no merit. Mr. Nelson is testifying to what he
23 saw the day after the gangway collapsed and it was sitting on the dock in broad
24 daylight. When it collapsed at about 6:30 P.M. on November 2, 2017 the night
25 before, it was already dark.

1 It does not require welding expertise to determine the hinge plate that
2 connected the two sections of the gangway had failed on both sides. It had pulled
3 away from the upper section of the gangway. This is an agreed fact. Anyone
4 looking at the upper section of the gangway can see that. This is in exhibit 3 to the
5 plaintiff's declaration.

6 Also, it does not require an expert to say that one of the welds on the hinge
7 plate that did not fail had cracks in it. Mr. Nelson personally saw the cracks.

8 The government mistakenly stated that Mr. Nelson relied solely on the
9 photographs he took for his opinions. Mr. Nelson relied on what he personally
10 witnessed when he looked at the broken gangway the next day. He is not relying
11 on photographs someone else took. His photographs prove what he saw.

12 There should be no question that Mr. Nelson may testify to what he
13 personally saw.

14 The court should deny defendant's objection to Mr. Nelson's declaration.

15 Dated: April 22, 2021.

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17 Respectfully Submitted,

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19 /s/ Charles Robinowitz

20 CHARLES ROBINOWITZ, OSB #691497
21 Attorney for Plaintiff
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CERTIFICATE OF SERVICE

I hereby certify that, on April 22, 2021 a true and correct copy of the foregoing **PLAINTIFF’S SURREPLY MEMORANDUM TO OBJECTION TO PLAINTIFF’S DECLARATION IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** was served by email on the following:

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